

Message Text

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ACTION SNM-05

INFO OCT-01 NEA-10 ISO-00 L-03 CA-01 PPT-01 DEAE-00
/021 W

-----084558 190451Z /16

R 180725Z JUL 78
FM AMEMBASSY KATHMANDU
TO SECSTATE WASHDC 2632
INFO AMEMBASSY NEW DELHI

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E.O. 11652: N/A
TAGS: SNAR, NP
SUBJECT: NARCOTICS LAWS

REF: STAGE 170187

1. BEGIN UNCLASSIFIED. FOLLOWING IS THE REPORT REQUESTED REFTEL
ON NEPALESE NARCOTICS LAWS AND ENFORCEMENT PRACTICES, WITH
RESPONSE KEYED TO POINTS RAISED REFTEL.

2. POSSESSION:

(A) THERE IS NO DISTINCTION BETWEEN SUBSTANCES IN TERMS OF
POSSESSION -- ALL ARE TERMED "NARCOTICS."

(B) THERE IS SPECIFIC PROVISION IN THE LAW FOR EXEMPTION
FROM PUNISHMENT IF POSSESSION INVOLVES A "SMALL AMOUNT FOR
PERSONAL USE." THIS QUALIFIER IS NOT FURTHER DEFINED, HOWEVER,
SO ONE MUST OPERATE ON THE PREMISE THAT THE STATUTORY PUNISHMENT
OF UP TO ONE YEAR'S IMPRISONMENT AND/OR A FINE OF UP TO 10,000
NEPALESE RUPEES (\$834.00) MAY APPLY. GENERALLY, EXPERIENCE
HAS BEEN THAT THE PENALTY VARIES ACCORDING TO THE GRAVITY OF
THE OFFENSE. THUS, FIRST OFFENDERS CARRYING 5 TO 10 GRAMS OF
HASHISH (USUALLY CAUGHT BY CUSTOMS AT THE AIRPORT) ARE SELDOM
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PUNISHED. THOSE CAUGHT WITH ONE OR TWO KILOS OF HASHISH, AGAIN
GENERALLY AT THE AIRPORT, USUALLY SPEND A WEEK IN JAIL, PAY
A FINE OF ROUGHLY 1,000 TO 2,000 RUPEES PER KILO AND ARE
RELEASED. THE KEY POINT IS THAT THERE IS, AS YET, NO ESTABLISHED
COURT PRECEDENT EITHER AS TO WHAT CONSITITUATES A "SMALL AMOUNT,"
OR WHAT PUNISHMENT IS APPROPRIATE TO WHAT "LARGER" AMOUNT.
END UNCLASSIFIED/BEGIN LOU

IN PRACTICE, SENTENCES HAVE VARIED CONSIDERABLY, WITH THE JUDGE EXERCISING CONSIDERABLE LATITUDE AND OUTSIDE FACTORS, SUCH AS POLITICAL CONNECTIONS, HAVING THEIR IMPACT. END LOU. BEGIN UNCLASSIFIED. ARRESTS OF FOREIGNERS FOR POSSESSION ARE SELDOM MADE ON STREETS OF KATHMANDU OR OTHER TOWNS. IN ADDITION TO HASHISH AND HARDER DRUGS, AMPHETAMINES, BARBITURATES, AND PAIN KILLERS WITH SYNTHETIC MORPHINE, THOUGH CONTROLLED SUBSTANCES UNDER NEPALESE LAW, ARE FREELY SOLD TO WESTERNERS. IT IS GENERALLY ONLY WHEN LEAVING THE COUNTRY, E.G., AT THE AIRPORT, THAT CUSTOMS CHECKS RESULT IN ARRESTS.

(C) PUNISHMENT FOR POSSESSION IS Milder THAN THAT FOR OTHER OFFENSES UNDER NARCOTICS LAW. OF PARTICULAR RELEVANCE IS THE DIFFERENCE BETWEEN "POSSESSION" AND ATTEMPTED "EXPORT." SINCE ENACTMENT OF THE NARCOTICS ACT IN 1976, WHILE MOST ARRESTS HAVE TAKEN PLACE AT THE AIRPORT IN THE ACT OF DEPARTURE, CHARGES HAVE BEEN FOR "POSSESSION," PRESUMABLY REFLECTING THE RELATIVELY SMALL AMOUNTS INVOLVED. WE HAVE NO PRECEDENTS ON WHERE LINE MIGHT BE DRAWN BETWEEN EXPORT AND SIMPLE POSSESSION.

3. TRAFFICKING:

(A,B) THE 1976 NARCOTICS ACT CONSOLIDATES ALL NARCOTIC DRUGS INTO A GENERAL TRAFFICKING OFFENSE PUNISHABLE BY THREE TO 14 YEARS IN JAIL AND A FINE OF UP TO 100,000 RUPEES.

(C) OFFENSES IN THE GENERAL AREAS OF TRAFFICKING ARE BROKEN DOWN INTO TWO CATEGORIES: "SALE AND DISTRIBUTION" AND "EXPORT LIMITED OFFICIAL USE

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OR IMPORT" OF NARCOTICS, WITH THE PUNISHMENTS THE SAME IN BOTH CATEGORIES. GENERALLY SPEAKING, THE INTERPRETATION OF THESE PORTIONS OF THE STATUTE, AT LEAST AS REGARDS FOREIGNERS, IS MOOT. THE EMBASSY HAS FEW CASES TO DRAW ON, AND NO CLEAR PATTERN HAS EMERGED EITHER AS TO EXACTLY WHAT CONSTITUTES AN OFFENSE UNDER THESE TWO CATEGORIES OR HOW THE NATURE OF THE CRIME BEARS ON ITS PUNISHMENT.

(D) THE STATUTE PROVIDES THAT THE PUNISHMENT FOR CONSPIRACY TO ENGAGE IN ANY OF THE OFFENSES SPECIFIED UNDER THE ACT, OR FOR INCITING, AIDING, OR ABETTING, WILL BE HALF THAT APPLICABLE TO THE CRIME ITSELF.

4. CULTIVATION, PRODUCTION, ELABORATION:

(A) THE CULTIVATION AND PRODUCTION OF CANNABIS, COCA, AND OPIUM IS PROHIBITED. THE STATUTORY PENALTY FOR CULTIVATION OR PRODUCTION OF THESE SUBSTANCES IS ONE TO THREE YEARS IMPRISONMENT AND A FINE OF UP TO 25,000 RUPEES. IN PRACTICE,

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ENFORCEMENT AGAINST CULTIVATION OF CANNABIS IS EXTREMELY UNEVEN. CANNABIS GROWS WILD IN MUCH OF THE "HILL REGIONS" OF NEPAL, AND ESPECIALLY IN THE FAR WEST THE IMPOVERISHED FARM POPULATION HAS DEPENDED HEAVILY ON REVENUE FROM CANNABIS PRODUCTION. UNTIL MORE IN THE WAY OF CROP/INCOME SUBSTITUTION PROGRAMS CAN BE INSTITUTED IT WILL BE DIFFICULT FOR THE GON TO TOUGHEN ENFORCEMENT. THE PRODUCTION OF OTHER NARCOTICS IS NEGLIGIBLE, AND LACKS THIS SANCTION OF CUSTOM.

(B) THERE ARE TWO SPECIFIC PROVISIONS IN THE LAW ALLOWING FOR LICENSED PRODUCTION OF NARCOTICS. THE FIRST APPLIES TO PRODUCTION FOR MEDICAL OR SCIENTIFIC PURPOSES AND COVERS ALL SUBSTANCES SO LONG AS UNDER THE DIRECT CONTROL OF OR LICENSE BY HMG. THE SECOND APPLIES ONLY TO CULTIVATION OF HASHISH FROM WILD "GANJA" PLANTS IN WESTERN HILLS AREAS FOR SPECIFIC PERIODS. AGAIN THIS IS TO BE DONE UNDER LICENSE. THE EMBASSY HAS NO INFORMATION ON THE APPLICATION OF EITHER OF THESE PROVISIONS AND BELIEVES THEM TO HAVE BEEN EXERCISED SPARINGLY AT BEST.

(C) THE "MANUFACTURE AND PREPARATION" OF NARCOTICS (PRESUMABLY COVERING "ELABORATION") IS PUNISHABLE BY THE SAME JAIL TERMS AND FINES AS TRAFFICKING.

5. FINANCIAL:

(A) NO SPECIFIC STATUTE TREATS THIS ASPECT OF THE NARCOTICS.
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END UNCLASSIFIED. BEGIN LOU. WHILE THERE IS SOME OFFICIAL CONCERN ABOUT THE FINANCING OF THE DRUG BUSINESS, INDIGENOUS FINANCIERS OFTEN HAVE BOTH THE MONEY AND CONNECTIONS TO PAY SUBSTANTIAL FINES OR BRIBES, AND HAVE USUALLY BEEN SUCCESSFUL

IN EVADING THE PROVISIONS OF NARCOTICS LAW AS WELL AS RESTRICTIONS ON CURRENCY CONTROL AND FOREIGN BANK ACCOUNTS. END LOU.
BEGIN UNCLASSIFIED.

(B) GOVERNMENT LAWS AND REGULATIONS PROVIDE FOR STRICT CONTROL ON THE PROVISION AND EXPORT OF CURRENCY, INCLUDING SPECIFYING THE PURPOSES FOR WHICH IT WILL BE GRANTED. IN THE CASE OF FOREIGNERS, THEY MAY EXPORT FOREIGN CURRENCY ONLY TO THE EXTENT THEY DECLARED SAME ON ENTERING THE COUNTRY. NEPALI CITIZENS ARE FORBIDDEN TO MAINTAIN FOREIGN BANK ACCOUNTS AND FOREIGNERS CANNOT CONVERT NEPALESE RUPEES FOR TRANSFER TO SUCH ACCOUNTS. THERE ARE, AS MIGHT BE EXPECTED, DIFFERENT RULES APPLYING TO FOREIGN INVESTMENTS IN NEPAL AND REPATRIATION OF PROFITS.

6. CRIMINAL PROCEDURE:

(A,B,C,E) THE LAW CALLS FOR A PERIOD OF INVESTIGATIVE DETECTION WHICH IN THEORY COULD LAST MONTHS. IN PRACTICE, HOWEVER, THIS INVESTIGATIVE PHASE IS GENERALLY COMPLETED WITHIN A WEEK. IN ALL CASES, THE CONSULAR OFFICER IS NOTIFIED AND CONSULAR ACCESS GENERALLY GRANTED WITHIN 24 HOURS. THE PRE-TRIAL DETENTION LASTS GENERALLY BETWEEN SIX AND 10 DAYS, WHEREUPON THE DEFENDANT HAS A PRE-TRIAL HEARING AT WHICH BAIL IS SET BY THE JUDGE (USUALLY PRECISELY THE AMOUNT THAT THE ACCUSED ULTIMATELY WILL PAY AS A FINE). ABOUT A WEEK AFTER HIS RELEASE ON BAIL, THE DEFENDANT'S CASE IS HEARD. THE TRIAL HEARING LASTS ABOUT AN HOUR, WITH THE CONSULAR OFFICER TRANSLATING AND EXPLAINING THE PROCEDURE AS NEEDED. THE EMBASSY HAS HAD NO EXPERIENCE WITH USE OF THE APPEAL PROCESS FOLLOWING CONVICTION ON A NARCOTICS CHARGE IN A LOWER COURT. WE ARE TOLD THAT AN APPEAL HEARING TAKES TIME -- MOST LIMITED OFFICIAL USE

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LIKELY OCCURRING SIX MONTHS TO ONE YEAR AFTER THE ORIGINAL SENTENCE. WITH THE PROSPECT OF SPENDING THE WAITING PERIOD IN JAIL, THIS ROUTE IS NOT LIKELY TO BE FOLLOWED WHEN THE ALTERNATIVE IS A SMALL FINE.

(D) SINCE ALL CASES TO DATE HAVE BEEN OF THE "OPEN AND SHUT" VARIETY, DEFENDANTS HAVE NOT CHOSEN TO HIRE LAWYERS. NO PUBLIC DEFENDER IS AVAILABLE UNTIL THE CASE REACHES THE APPEALS COURT LEVEL.) HOWEVER, THE LOWER COURT PROCESS IS HIGHLY INFORMAL AND ALLOWS DEFENDANTS ADEQUATE OPPORTUNITY TO PRESENT THEIR VERSION OF THE CASE AND TO QUESTION THE GOVERNMENT'S CASE. IN ANY EVENT, SHOULD A DEFENDANT SO DESIRE, HE CAN ENGAGE AN EXPERIENCED LAWYER FOR A PITTANCE.

(F) THE GON DOES NOT GENERALLY PHYSICALLY EXPEL THOSE CONVICTED ON NARCOTICS OFFENSES FROM THE COUNTRY. OUR EXPERIENCE HAS BEEN, HOWEVER, THAT IN MOST CASES THE OFFENDER'S NEPALESE VISA HAS EXPIRED BY THE TIME THE TRIAL PROCESS IS COMPLETED. THE GOVERNMENT THEN REFUSES TO EXTEND THE VISA AND THE INDIVIDUAL, NOW WELL KNOWN TO AUTHORITIES, HAS LITTLE CHOICE BUT TO LEAVE COUNTRY WITHOUT UNDUE DELAY.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NARCOTICS, INTERNATIONAL LAW
Control Number: n/a
Copy: SINGLE
Draft Date: 18 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978KATHMA03667
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780295-1010
Format: TEL
From: KATHMANDU
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780749/aaaaboxl.tel
Line Count: 225
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 8f385171-c288-dd11-92da-001cc4696bcc
Office: ACTION SNM
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 10 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1973939
Secure: OPEN
Status: NATIVE
Subject: NARCOTICS LAWS
TAGS: SNAR, NP
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/8f385171-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014